IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL NO. 95 OF 2004

Shardadevi Vishnupant Mahadik. .. Petitioner.

vs.

The State of Maharashtra

& Anr. .. Respondents.

Mr. P.S. Dani for petitioner.

Mr. P.M. Patil, AGP. for Respondent no. 1.

Mr. R.V. Govilkar a/w Mr. Sarang Aaradhye

for Respondent No. 2.

..

Coram: J.N. PATEL, ACTING C.J. &

S.C. DHARMADHIKARI, J.

Date: 28th March, 2007.

P.C.

. Leave to amend granted to substitute the word "Solapur" by the word "Pandharpur" in prayer clause (b). Amendment to be carried out forthwith.

2. This is a public interest litigation initiated by the petitioner for seeking a writ of this Court to remove encroachment on the area which is shown as a

road connecting Bedrekar house to Doctor Kodolikar house in the development plan for the city of Pandharpur and the respondents be further directed to construct a road as per the said development plan at the said site and ensure that the drainage of water and other effluents from the said area is restored.

3. It is unfortunate that the citizens have to knock the doors of this Court seeking a writ of mandamus against the Municipal Council for performing their statutory obligations.

4. The affidavit in reply filed by the Municipal Council does not dispute that the road has to be constructed as sought for in the petition in the public interest and has also expressed its willingness to do so but then the whole process has got stalled by illegal encroachment on the public road and, therefore, according to the Municipal Council, they will have to take the following steps. :-

1) To remove approximately 80 hutments on the said area by following due process of law.

2) To get restruction sanction from the General body meeting of the Municipal Council.

3) To get technical sanction from competent authority i.e. Maharashtra Jeevan Pradhikaran.

4) To call Tender, to Get Said work done.

5) Last step is to allot the work amongst the Tenderers.

This response of the Municipal Council by way of an affidavit has come on 14.3.2007 when the petition is pending in this Court from 2004. As the Municipal Council has expressed its willingness to do so, the only thing which is missing from their commitment is as to within how much time they will be able to do so.

5. We fail to understand as to why the Chief Officer of the Municipal Council, Pandharpur has failed to protect the public property vested in the Municipal Council and allowed it to be encroached. In our view, disciplinary action has to be initiated against the officials of the Municipal Council for their dereliction of duty and negligence in protecting public property vested in them which is meant for construction of road. We are of the view that encroachers have no prima facie right to be protected and they have to be removed by following due process of law. It may be that some of the hutment dwellers who have illegally

encroached on the public road may seek relief in the Civil Court and obtain injunction. For the present, the Municipal Council has not placed on record whether any such encroacher has gone to civil court. We have already made it clear that if the encroachment is on public road, then, a person cannot claim any prima facie case nor any balance of convenience can be sought or substantial or irreparable loss and, therefore, there is no question of being protected by Court orders. We, therefore, direct the Municipal Council to remove all encroachments by demolishing the hutments by invoking the provisions of the Maharashtra Municipalities Act, 1965 and all the encroachments and unauthorised and illegal structures should be removed on or before 30.4.2007 by following due process of law and steps to complete all the formalities should be taken as required so that road is constructed and made available to the public on or before 30.10.2007.

6. The petition stands disposed of accordingly. Liberty given to the parties to move this Court if any contingency arises.

ACTING CHIEF JUSTICE

S.C. DHARMADHIKARI, J.